



**The Comptroller General
of the United States**

Washington, D.C. 20548

Kirkpatrick

Decision

Matter of: Interstate Van Lines, Inc.
File: B-197911.5
Date: June 22, 1989

DIGEST

A general allegation that the carrier negligently packed a phonograph turntable is not a valid basis to hold the carrier liable for an out-of-balance phonograph turntable shipped with a military member's household goods. A prima facie case without proof of negligence may be established against a carrier by showing that the carrier received the article at origin in good condition and delivered it in damaged condition, with proof of the amount of damages. But the carrier's failure to detect and document any imbalance existing when it received the turntable did not establish receipt in good condition, since it could not reasonably be expected that the carrier would play the phonograph to observe the imbalance. Other proof of good condition upon receipt was not submitted, and there was no proof of the carrier's negligence.

DECISION

This action concerns Interstate Van Lines' appeal of its claim for a refund of \$36, the amount collected by the Navy because of an unbalanced phonograph turntable transported with other household goods of Ensign Randall L. Davis. Our Claims Group sustained the Navy's action. In the record before us, there is no evidence that the turntable was in balance and in good condition when received by Interstate Van Lines for shipment. Therefore, there is no prima facie case against Interstate Van Lines for damages. Nor is there any proof in the record that Interstate Van Lines negligently packed the turntable or caused the turntable to be unbalanced. Consequently, Interstate's claim should be allowed in the amount of \$36.

Interstate Van Lines packed the household goods, including the turntable, on or about February 23, 1984, at Ensign Davis' old residence in Ridgeville, South Carolina.

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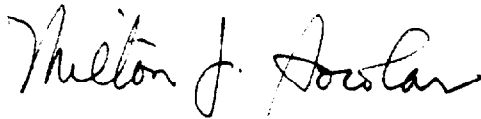
It did not unpack the household goods upon delivery on February 27, 1984, at his new residence in Athens, Georgia. Ensign Davis filed a claim for damaged and missing items on March 12, 1984, stating in writing that the turntable was "mispacked causing the balancing to [be] unadjustable," and the Navy concluded that the turntable was "pushed out of balance by improper packing." On the other hand, Interstate Van Lines takes the position that the claimed damage was an internal mechanical malfunction for which it is not liable.

When a prima facie case is established, the carrier is liable for damage to articles transported without proof of its negligence unless it affirmatively shows that the loss or damage was occasioned by the shipper, acts of God, a public enemy, public authority, or the inherent vice or nature of the articles. To establish a prima facie case, the shipper may show the carrier's receipt of the articles at the point of origin in good condition, arrival of the articles at destination in a damaged condition, and the amount of the damages. See Missouri Pacific R. R. v. Elmore and Stahl, 377 U.S. 134, 138 (1964); Gulf Pacific Agriculture Coop, Inc., 54 Comp. Gen. 742 (1975).

A prima facie case has not been presented to us because no proof has been submitted showing that Interstate Van Lines received the turntable in good condition and in balance. If the carrier can reasonably observe any existing damage when it receives the article but fails to document damage, receipt in good condition may be established, and there is then a prima facie case against the carrier for damage discovered after delivery. See Chandler Trailer Convoy, Inc., B-193432, Sept. 13, 1979; Paul Arpin Van Lines, Inc., B-193182, June 16, 1981. In this case, any imbalance existing at the time of receipt could not have been detected by Interstate Van Lines unless it operated the turntable. We conclude that it would be unreasonable to expect a household-goods carrier to detect impairments by playing a phonograph which it receives for packing and shipment. Consequently, failure to note the imbalance on the bill of lading at the time of packing does not establish that Interstate Van Lines received the turntable in good condition, and we have no other information suggesting that Ensign Davis presented the turntable to Interstate Van Lines in balance before packing.

Without a prima facie case, there must be an affirmative showing of negligence to hold Interstate Van Lines liable. The Navy has not shown by any factual analysis that the unbalanced turntable was caused by negligent packing. The turntable was placed in a "Dish-Pak," the same type of container used for packing Ensign Davis' china and

glassware. There is no suggestion that the "Dish-Pak" was an inappropriate container or that in any particular way the packing caused the imbalance. The Navy's statement that the "turntable was pushed out of balance by improper packing of [Interstate Van Lines]" is conclusory and fails to point out in what respect the packing was inadequate so as to cause the imbalance. A mere allegation or suggestion of mispacking does not satisfy the burden of substantiating the claim of negligent packing. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen 415 (1978), at 419. Absent some affirmative proof of such negligence the claim must be allowed.



Acting Comptroller General
of the United States